It is hard to see where any ambiguity existed. The provision with reference to the bill of lading by its express terms referred to the attachment of the insurance and although the carrier was already liable it was perfectly competent for the carrier to stipulate when its liability should commence.

INSURANCE—CONCEALMENT—RELEASE OF LIABILITY—SUBROGATION.—Plaintiff purchased from a railroad the lumber in a building which was to be demolished, and in the contract of sale he released the railroad from all liability for damage by fire caused by it. He insured his interest in the building in the defendant Company. The defendant thoroughly inspected the premises before writing the policy, but did not inquire as to the contract and the plaintiff made no statement of it. The policy provided that, "If the company shall claim that the fire was caused by the act or neglect of any person or corporation the company shall be subrogated to all the right of recovery by the insured for the loss resulting therefrom and such right shall be assigned to the company by the assured." Another clause in the policy avoided it if the assured concealed any material fact concerning the insurance or the subject thereof. *Held,* it was for the court to say whether the failure to mention the release was a material concealment under the terms of the policy, and under the facts of the case there was not sufficient evidence of bad faith to avoid the insurance. *Ensel* v. *Lumber Insurance Co.* (Ohio 1913), 102 N. E. 955.

The decision raises questions which are usually not necessary for the decision of such cases. An agreement, between a railroad company and the owner of property which stands on ground leased from the former, that the risk of all loss or damage by fire however caused is to be assumed by the insurer renders void a policy afterwards issued insuring such property and expressly stipulating for the right of subrogation. *Downes Farmers Warehouse Ass'n* v. *Pioneer Mutual Ins. Ass'n,* 41 Wash. 372, 83 Pac. 423; *Kennedy Bros.* v. *Ins. Co.,* 119 Iowa 29, 91 N. W. 831. See also *Fire Ass'n of Philadelphia* v. *LaGrange Compress Co.,* 50 Tex. Civ. App. 172, 109 S. W. 1134. The same has been held where the bill of lading under which the insured property was shipped stipulated that the carrier should have the benefit of any insurance carried. *Carstairs* v. *Mechanic's & T. Ins. Co.,* 18 Fed. 473. But see *Tate* v. *Hylsup,* L. R. 15 Q. B. Div. 368. In the principal case the court does not consider the above decisions but bases its holding upon the determination of the question whether there was such nondisclosure on the part of the assured as to avoid the policy. Under the pleadings it was necessary for the plaintiff to show actual fraud, of which there was no evidence, but the reasoning of the court involves the question of whether the failure of the assured to disclose the fact that the right of subrogation against any person has been destroyed amounts to the concealment of a material fact. The court held that it did not concern the risk directly but rather concerned the separate contract of subrogation, and whether it was a material concealment was a question for the court. The same question was directly involved in *Pelzer Manufacturing Co.* v. *Sun Fire Ins. Co. et al.,* 36 S. C. 213, 15 S. E. 562 on substantially similar facts. The court held that whether the failure to disclose the release was a concealment of a material fact was a question for

the jury. They also refused to distinguish between policies containing an express subrogation clause and those containing no such provision. See also the same case in 41 Fed. 271, and note in 29 L. R. A. N. S. 698.

INSURANCE—SUBROGATION—SPLITTING CAUSES OF ACTION.—Plaintiff insured an automobile against accident, the policy providing for subrogation. It was struck by defendant's street car and not only was the automobile damaged but the owner suffered personal injuries. Plaintiff discharged its liability under the policy and received an assignment of the owner's rights for the injury to the car. Thereafter the owner recovered against the defendant for his personal injury. *Held,* that the recovery of that judgment was not a bar to a subsequent recovery by the plaintiff under its assignment, for owing to the provision in the policy for subrogation two causes of action arose from the accident. *Underwriters at Lloyds Ins. Co.* v. *Vicksburg Traction Co.,* (Miss. 1913), 63 So. 455.

The question of whether an injury to person and to property by the same wrongful act gives rise to more than one cause of action is one upon which the courts are divided. By the weight of authority in America only a single cause of action arises, these courts considering the right of recovery as based upon the single wrongful act rather than the injuries resulting therefrom. *King* v. *Chicago, M. & St. P. Ry.,* 80 Minn. 83, 82 N. W. 1113, 81 Am. St. Rep. 238, 50 L. R. A. 161 and note The English and several well-considered American cases hold that there are separate causes of action for each injury and not a single indivisible cause arising from the wrongful act. *Brunsden* v. *Humphrey,* L. R. 14 Q. B. Div. 141, 53 L. J. Q. B. N. S. 476; *Ochs* v. *Public Service Co,* — N. J.—, 80 Atl. 495, 36 L. R. A. N. S. 240 and note. In an earlier decision the Mississippi court had adopted the former of these views, *Kimball* v. *Railroad,* 94 Miss. 396, 48 So. 230. The decision in the principal case endeavors to reconcile this doctrine with the principles of subrogation under a policy of insurance. The court held that, by reason of the contract of insurance with the provision for subrogation, the insurer had an equitable interest in the property insured; that upon the injury it had a like interest in the damages, which ripened into a cause of action when they indemnified the assured for his loss. Hence there were two causes of action arising from the injury to the property alone. This view enabled the court to disregard the effect of the judgment for the personal injury, but its soundness may be doubted on other grounds. It is difficult to see how an insurer has any interest in the property insured upon which he can base a separate cause of action. He has no right of action against a tort-feasor other than by subrogation to those vested in the assured at the time of the loss. *Phoenix Ins. Co.* v. *Erie Transportation Co.,* 117 U. S. 312. To hold otherwise would seem to overthrow the whole doctrine of subrogation. If the insurer has a right of action separate from that of the assured it would seem that no release by the latter could impair his rights, and yet the contrary has repeatedly been held. Even where the assured in his release excepts the claim of insurer it has been held that the rights of the latter were nevertheless cut off. *Packman* v. *Insurance Co.,* 91 Md. 517, 50 L. R. A. 828, 80 Am. St. Rep. 461.